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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,332	09/04/2003	Hank Gevedon	946-001	6091

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EXAMINER

FERNSTROM, KURT

ART UNIT PAPER NUMBER

3714

DATE MAILED: 11/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/655,332

Applicant(s)

GEVEDON, HANK

Examiner

Kurt Fernstrom

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3, 5-8, 10, 12-14, 17, 18 and 21-25 is/are allowed.
- 6) ☒ Claim(s) 4, 9, 11, 15, 16, 19, 20 and 26-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/3/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's arguments concerning the restriction of the claims have been considered and found persuasive. Upon reviewing the claims, it is apparent that the inventions would all be classified in the same areas, and no excessive burden would result from examination of all of the claims. As a result, the restriction requirement is withdrawn, and all claims have been examined below.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4, 9, 11, 15, 16, 19, 20 and 26-51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims contain numerous examples of language which lacks antecedent basis, because it was never clearly recited as part of the invention. Such language includes "tires" (claim 4), "said electro-mechanical control mechanism" (claim 9 – claim 1 recites an electro-mechanical control **module**), "said steering solenoid" (claims 19 and 20), "said timer" (claim 20), "said reflective tail material" (claims 26 and 27), "said concentrating lens" (claim 28), "said two LED eyes" (claims 42 and 44), "said tail motor" (claims 42 and 44), "said two speakers" (claims 42 and 44), "said drive motor" (claim

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44), "said fish" (claims 50 and 51) and "the mode" (claims 50 and 51). Appropriate correction is required.

Also, there are other instances of indefinite language in the claims. Claim 11 recites "combining the two". It is not clear what "the two" is intended to refer to. In claim 15, the term "may" in line 11 renders the claim indefinite because it is not clear whether a positive limitation to the claim is being recited. Claim 16 is indefinite because a dependent claim cannot remove limitations from a previous claim; also, "the above external antenna" lacks antecedent basis because an "above external antenna" is not part of the invention. Claim 38 recites an electro-mechanical control module in the preamble; however, the invention recited in the preamble should correspond to that recited in the claim from which the claim depends. In other words, claim should read "The system of claim 1, wherein the electro-mechanical control module comprises...". Claim 46 recites a mechanical practice fish in the preamble as the invention, but recites a lure in the body of the claim. It is not clear how a fish, as opposed to the system of claim 1, can comprise a lure.

#### ***Allowable Subject Matter***

Claims 1-3, 5-8, 10, 12-14, 17, 18 and 21-25 are allowed.

Claims 4, 9, 11, 15, 16, 19, 20 and 26-51 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

The following is a statement of reasons for the indication of allowable subject matter: The prior art fails to disclose or suggest a device or method having all of the limitations of the claims. While various devices and methods for training fishermen are known, and various toy and simulated fish devices are known, there is no suggestion of a device having each of the limitations of claims 1, 46, 50 and 51. In particular, there is no suggestion of a detection mechanism within a fish which works in conjunction with an electro-mechanical module to control the movement of the fish while detecting and seeking a lure, as recited in claim 1. Similarly, claim 46 recites an electronic detection means for detecting a lure, which is not disclosed or suggested by the prior art. Claims 50 and 51 contain corresponding method steps. As a result, claims 1, 46, 50 and 51, and all claims dependent therefrom, contain allowable subject matter.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fry and French disclose fishing simulation devices and methods.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Fernstrom whose telephone number is (703) 305-0303. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (703) 308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KF  
November 19, 2004



**KURT FERNSTROM**  
**PRIMARY EXAMINER**